

**STATE OF MICHIGAN**

**BEFORE THE MICHIGAN JUDICIAL TENURE COMMISSION**

**COMPLAINT AGAINST:**

**Referee David G. Myers**

Sanilac County Friend of the Court

60 W Sanilac Road

PO Box 187

Sandusky, MI 48471

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**Formal Complaint No. 86**

**EXAMINER'S REPLY MEMORANDUM AS TO SANCTIONS**

The Examiner is compelled to address several issues raised by Respondent in his Response Brief on the Issue of Sanction, filed on August 24, 2010. His arguments, focused on the proportionality analysis of the Examiner's sanctions argument, for the first time address an arguably relevant disciplinary analysis.

Respondent compares select judicial disciplinary cases involving drunk driving by a judicial officer to his own misconduct. He asserts that there is no basis to exceed the 90-day suspension without pay assessed in *In re Steenland*, 482 Mich 1230 (2008), and *In re Nebel*, 485 Mich 1049 (2010). His blood alcohol was comparable to Judge Steenland's (.21 to .23). In addition, his driving was not so offensive that he should receive a longer suspension than Judge Nebel, who traveled at a speed of 105 miles per hour. Finally, he contends that in the three most recent cases cited by the Examiner in his proportionality argument, none of

the judicial officers had completed his sentence, had driving privileges restored by the Michigan Secretary of State, had abstained from alcohol use, and had regularly attended Alcoholics Anonymous.

However, Respondent continues to display a failure to understand the nature and purpose of judicial disciplinary proceedings, and the distinctions that warrant his 120-day suspension without pay. He references certain factual distinctions in the other cases, but ignores the most relevant one: that Judges Steenland and Nebel negotiated the length of the suspensions. In this matter, however, there is no agreement. Thus, the 90-day suspension of those other matters is really the least amount of time Respondent should be suspended for the reasons set forth in the Examiner's main brief, but he should be suspended for 120 days.

Further, Respondent's point that he completed the requirements of his criminal sentence, plus abstained from alcohol and attended Alcoholics Anonymous (factors absent from other disciplinary matters, including Judge Steenland's or Nebel's cases), reflects that he still fails to appreciate that compliance with sentencing requirements are *not relevant* to the consideration of a sanction. Those issues are not addressed in the other cases as judicial officers are *expected* to comply with those requirements (as is any defendant in a similar situation). A judicial officer does not receive "bonus points" for doing what is

required under these circumstances. Of course, the failure of a respondent to comply *would* be a consideration, as an aggravation of the criminal offense.

Finally, Respondent's one-sentence statement that he is remorseful, contained in the conclusion of his response brief, rings hollow. It is his first expression of remorse for his actions, or for the negative impact that they have had on the judiciary. It was raised *only* after the Examiner noted Respondent's prior failure to do so throughout this disciplinary proceeding. As noted by the Examiner in the sanctions brief, Respondent's focus has been in the opposite direction, as he has repeatedly attempted to minimize the impact of his misconduct.

The Examiner again urges the Commission to recommend that Respondent be publically censured, and suspended without pay from his position as a Sanilac County referee for a period of 120 days.

JUDICIAL TENURE COMMISSION  
OF THE STATE OF MICHIGAN  
3034 W. Grand Boulevard, Suite 8-450  
Detroit, MI 48202

By: \_\_\_\_\_/s/\_\_\_\_\_  
Paul J. Fischer (P 35454)  
Examiner  
Casimir J. Swastek (P 42767)  
Associate Examiner

Dated: August 25, 2010